STATE OF MAINE
KENNEBEC, SS.

BOARD OF OVERSEERS OF THE BAR

Petitioner,

v.

JEFFREY J. FAIRBANKS, ESQ.
of Old Orchard Beach, Maine
Me. Bar No. 8150,

Respondent.

BOARDS OF OVERSEERS OF THE BAR
GRIEVANCE COMMISSION
GCF FILE NO. 98-154

DECISION

This matter was heard by Panel E of the Grievance Commission on the March 12, 1999 petition of the Board of Overseers against Jeffrey J. Fairbanks, Esq., of Old Orchard Beach, Maine. On June 1, 1999, a public hearing was conducted in accordance with Maine Bar Rule 7.1(e)(2) to determine whether there were grounds for the issuance of a reprimand or whether probable cause existed for the filing of an information against Mr. Fairbanks arising out of his failure to pay a fee to the Kennebec County Sheriff's Department for the service of civil process in a civil action foreclosure in which Mr. Fairbanks represented the plaintiff. The fee, totaling $35.00, was ultimately paid by Mr. Fairbanks, but only after repeated requests on the part of the Sheriff's Department for payment and the Sheriff's Department's threat to initiate bar discipline.¹

At the urging of the Sheriff's Department, Bar Counsel investigated the matter. Mr. Fairbanks did not respond to Bar Counsel's inquiries. The petition is not, as a consequence, limited

¹ The Panel does not condone the practice of threatening bar discipline as a collection tactic and notes that such activity on the part of attorneys is, itself, a violation of the Maine Bar Rule 3.6(c).
to Mr. Fairbanks' failure to pay the sheriff's fee. The petition alleges a failure to be punctual in Mr. Fairbank's professional commitments and a failure to comply with Maine Bar Rule 2(c) which mandates that all attorneys licensed in Maine respond to Bar Counsel inquiries. The petition also alleges a violation of M.B.R. 3.2.

At the hearing, no objection was made to the composition of the panel. The Board of Overseers was represented by Assistant Bar Counsel, Geoffrey Welsh. Mr. Fairbanks appeared pro se. Mr. Welsh examined Kennebec County Deputy Sheriff Harry McKenney and Mr. Fairbanks. Mr. Fairbanks also testified on his own behalf. Both parties offered written evidence in the form of exhibits. All exhibits were admitted into evidence without objection.

Based upon the evidence, the Panel finds that Mr. Fairbanks has violated Maine Bar Rule 2(c) for his failure to respond to inquiry by Bar Counsel. While admitting his failure to respond, Mr. Fairbanks urged the Panel to take into account several factors mitigating against discipline. He explained in his own defense that his is a solo private practice. He has practiced in Old Orchard Beach since 1995. He concentrates his practice in criminal defense and divorce matters. The civil action foreclosure which gave rise to the unpaid fee was Mr. Fairbanks' first engagement in that capacity. Mr. Fairbanks has no office staff and he has experienced persistent difficulties in meeting the ordinary expenses incurred by him in his solo practice.

Mr. Fairbanks described the manner in which he manages the financial commitments of his practice. Mr. Fairbanks segregates his mail based upon his assumption of its contents. Much of the mail which he assumes is bill related, remains unopened. Mr. Fairbanks attends to those bills which he regards as vital to his continuing practice, i.e., rent and telephone. He addresses his other liabilities as cash flow permits. In the case of this bill for service of process, mail from the Sheriff's Department addressed to Mr. Fairbanks and postmarked as of December 15, 1998, was admitted as
Board Exhibit 6. It remained unopened until Mr. Fairbanks opened it in response to a question posed by Mr. Welsh.

Mr. Fairbanks assured the Panel that he promptly opened the mail he received from Bar Counsel and scanned that correspondence to determine that it was related to the unpaid sheriff’s fee. He did not, however, review the litany of potential bar rule violations identified by Bar Counsel in Board Exhibit 2. He was, thus, unaware that Bar Counsel had identified the potential for bar violations based upon alleged prejudice to the administration of justice and dishonesty. Mr. Fairbanks explained that he promptly opened a second letter addressed to him by Bar Counsel (Board Exhibit 3), but that he had read that correspondence only after bar counsel’s deadline for a response had expired because he had been away from his office on his honeymoon. He made no attempt to respond, albeit late.

The Panel finds none of Mr. Fairbanks’ explanations to mitigate against discipline. Mr. Fairbanks admitted that his violation of Maine Bar Rule 2(c) was not minor and the Panel regards the inaction of Mr. Fairbanks as a serious violation of the rule. Mr. Fairbanks did not read Bar Counsel’s initial inquiry with sufficient care to understand the nature of the allegations made against him. He admitted that he did not read the bar rules cited by Bar Counsel and he did not respond. The second communication from Bar Counsel warned Mr. Fairbanks that his failure to respond to Bar Counsel could, standing alone, amount to a rule violation. Mr. Fairbanks, again, misjudged the nature of the allegations (he presumed that if he paid the bill the matter would be resolved) and he did not respond. Public confidence in the grievance process as a reliable method to regulate lawyers is seriously diminished when they (despite their obligations as officers of the court) ignore routine inquiries concerning their professional conduct.

In addition, Mr. Fairbanks’ apparent failure to analyze the allegations made against him compounds the problem presently before us and suggests that there exists a significant potential for
harm to Mr. Fairbanks' clients, particularly if Mr. Fairbanks' habits in regards to his professional commitments do not improve. There is, however, no allegation of actual harm occasioned to Mr. Fairbanks' clients attributable to his failure to pay the Sheriff's fee. The Panel believes, therefore, that a warning should suffice to ensure that such inattention to professional commitments is not repeated.

On the basis of the foregoing, the Panel reprimands Jeffrey J. Fairbanks, Esq. for his failure without good cause, in violation of Maine Bar Rule 2(c), to respond to inquiries by Bar Counsel.

As to the allegations alleging failure to be punctual in all professional commitments in violation of Maine Bar Rule 3.6(a), the Panel directs Bar Counsel pursuant to Maine Bar Rule 7.1(e)(3)(B) to deliver to Mr. Fairbanks a warning consistent with this decision.

As for the balance of the petition, the allegations are dismissed.

Dated this 16th day of July, 1999.

Respectfully Submitted

[Signatures]

Paula Silsby, Chair

Lou Wagner

Stephen G. Morrell